

§ 1023.4

(3) Board-supplied neutrals and support personnel shall keep ADR matters confidential and comply with any confidentiality requirements of ADR agreements accepted by the Board. Board personnel may not disclose any confidential information unless permitted by the parties or required to do so by law.

§ 1023.4 Authorities.

(a) *Contract Disputes Act Authorities.* The CDA imposes upon the Board the duty, and grants it the powers necessary, to hear and decide, or to otherwise resolve through agreed procedures, appeals from decisions made by agency contracting officers on contractor claims relating to contracts entered into by the DOE or relating to contracts of another agency, as provided in Section 8(d) of the CDA, 41 U.S.C. 607(d). The Board may issue rules of practice or procedure for proceedings pursuant to the CDA. The CDA also imposes upon the Board the duty, and grants it powers necessary, to act upon petitions for orders directing contracting officers to issue decisions on claims relating to such contracts, 41 U.S.C. 605(c)(4). The Board may apply through the Attorney General to an appropriate United States District Court for an order requiring a person, who has failed to obey a subpoena issued by the Board, to produce evidence or to give testimony, or both, 41 U.S.C. 610.

(b) *General Powers and Authorities.* The Board's general powers include, but are not limited to, the powers to:

(1) Manage its cases and docket; issue procedural orders; conduct conferences and hearings; administer oaths; authorize and manage discovery, including depositions and the production of documents or other evidence; take official notice of facts within general knowledge; call witnesses on its own motion; engage experts; dismiss actions with or without prejudice; decide all questions of fact or law raised in an action; and make and publish rules of practice and procedure;

(2) Exercise, in proceedings to which it applies, all powers granted to arbitrators by the Federal Arbitration Act, 9 U.S.C. 1-14, including the power to issue summonses.

10 CFR Ch. X (1-1-10 Edition)

(c) In addition to its authorities under the CDA, the Board has been delegated by Delegation Order 0204-162 issued by the Secretary of Energy, the following authorities:

(1) Issue rules, including rules of procedure, not inconsistent with this section and departmental regulations;

(2) Issue subpoenas under the authority of §161.c of the Atomic Energy Act of 1954, 42 U.S.C. 2201(c), as applicable;

(3) Such other authorities as the Secretary may delegate.

§ 1023.5 Duties and responsibilities of the Chair.

The Chair shall be responsible for the following:

(a) The proper administration of the Board;

(b) Assignment and reassignment of cases, including alternative dispute resolution (ADR) proceedings, to administrative judges, hearing officers, and decision panels;

(c) Monitoring the progress of individual cases to promote their timely resolution;

(d) Appointment and supervision of a Recorder;

(e) Arranging for the services of masters, mediators, and other neutrals;

(f) Issuing delegations of Board authority to individual administrative judges, panels of judges, commissioners, masters, and hearing officers within such limits, if any, which a majority of the members of the Board shall establish;

(g) Designating an acting chair during the absence of both the Chair and the Vice Chair;

(h) Designating a member of another Federal board of contract appeals to serve as the third member of a decision panel if the Board is reduced to less than three members because of vacant positions, protracted absences, disabilities or disqualifications;

(i) Authorizing and approving ADR arrangements for Board cases; obtaining non-Board personnel to serve as settlement judges, third-party neutrals, masters and similar capacities; authorizing the use of Board-provided personnel and facilities in ADR capacities, for matters before the

Department of Energy

§ 1023.8

Board, and for other matters when requested by officials of the DOE; and entering into arrangements with other Federal administrative forums for the provision of personnel to serve in ADR capacities on a reciprocal basis;

(j) Recommending to the Secretary the selection of qualified and eligible members. New members shall, upon selection, be appointed to serve as provided in the CDA;

(k) Determining whether member duties are consistent with the CDA; and

(l) Reporting Board activities to the Secretary not less often than biennially.

§ 1023.6 Duties and responsibilities of Board members and staff.

(a) As is consistent with the Board's functions, Board members and staff shall perform their duties with the highest integrity and consistent with the principles set forth in § 1023.3.

(b) Members of the Board and Board attorneys may serve as commissioners, magistrates, masters, hearing officers, arbitrators, mediators, and neutrals and in other similar capacities.

(c) Except as may be ordered by a court of competent jurisdiction, members of the Board and its staff are permanently barred from *partedisclosure* of information concerning any Board deliberations.

§ 1023.7 Board decisions; assignment of judges.

(a) In each case, the Chair shall assign an administrative judge as the Presiding Administrative Judge to hear a case and develop the record upon which the decision will be made. A Presiding Judge has authority to act for the Board in all non-dispositive matters, except as otherwise provided in this Part. This subparagraph shall not preclude the Presiding Administrative Judge from taking dispositive actions as provided in this Part or by agreement of the parties. Other persons acting as commissioners, magistrates, masters, or hearing officers shall have such powers as the Board shall delegate.

(b) Except as provided by law, rule, or agreement of the parties, contract appeals and other cases are assigned to a deciding panel established by the

Board Chair consisting of two or more administrative judges.

(c) The concurring votes of a majority of a deciding panel shall be sufficient to decide an appeal. All members assigned to a panel shall vote unless unavailable. The Chair will assign an additional member if necessary to resolve tie votes.

§ 1023.8 Alternative dispute resolution (ADR).

(a) *Statement of Policy.* It is the policy of the DOE and of the Board to facilitate consensual resolution of disputes and to employ ADR in all of the Board's functions when agreed to by the parties. ADR is a core judicial function performed by the Board and its judges.

(b) *ADR for Docketed Cases.* Pursuant to the agreement of the parties, the Board, in an exercise of discretion, may approve either the use of Board-annexed ADR (ADR which is conducted under Board auspices and pursuant to Board order) or the suspension of the Board's procedural schedule to permit the parties to engage in ADR outside of the Board's purview. While any form of ADR may be employed, the forms of ADR commonly employed using Board judges as neutrals are: case evaluation by a settlement judge (with or without mediation by the judge); arbitration; mini-trial; summary (time and procedurally limited) trial with one-judge; summary binding (non-appealable) bench decision; and fact-finding.

(c) *ADR for Non-Docketed Disputes.* As a general matter the earlier a dispute is identified and resolved, the less the financial and other costs incurred by the parties. When a contract is not yet complete there may be opportunities to eliminate tensions through ADR and to confine and resolve problems in a way that the remaining performance is eased and improved. For these reasons, the Board is available to provide a full range of ADR services and facilities before, as well as after, a case is filed with the Board. A contracting officer's decision is not a prerequisite for the Board to provide ADR services and such services may be furnished whenever they are warranted by the overall best interests of the parties. The forms